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| 10/530,380 | 04/06/2005 | Ralph Hubert Peters | NL 020989 | 4939 |

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| EXAMINER |
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DUNN, DANIELLE N

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| ART UNIT | PAPER NUMBER |
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2875

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08/29/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/530,380

Applicant(s)

PETERS ET AL.

Examiner

Danielle Dunn

Art Unit

2875

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 June 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

Applicant's amendment filed on 6/11/2007 has been entered. Claims 1 and 12 have been amended. No claims have been cancelled. No claims have been added. Claims 1-20 are still pending in this application, with claims 1 and 12 being independent.

Claim Rejections - 35 USC § 102

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. **Claims 1, 7-9, 11, 12, 16-18 and 20** are rejected under 35 U.S.C. 102(b) as being anticipated by Apple (US 5,833,349).

1. An illuminating device comprising light means (**light bulb 22; Fig. 1**) for generating primary light and a light-emitter (**lamp shade 10; Fig. 1**) comprising an after-glowing material (**a phosphorescent additive; Column 2, lines 50-52**) for emitting secondary light after the light means is switched off or has extinguished, wherein the after-glowing material is activated by the primary light emitted from the light means (**Column 2, line 67 – Column 3, line 4**), and wherein the after-glowing material is shaped in a predetermined pattern for displaying information and is substantially invisible when the light means generates the primary light (**the phosphorescent additive is distributed uniformly throughout the clear plastic sheet, the plastic sheet is a translucent thermoplastic such as clear polyvinyl chloride or polyethylene**

containing a phosphorescent additive; Column 2, lines 3-7; therefore since the plastic sheet/lamp shade 10 can have a variety of shaped and configurations, Column 2, lines 55-60, the phosphorescent additives can have any shape and they are also substantially invisible).

Regarding the claims recitation that the instant invention **“after-glowing material is for emitting secondary light after the light means is switched off or has extinguished”**, the applicant is advised that, while the features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. *In re Schreiber*, 44 USPQ2d 1429. In addition, it has been held by the courts that apparatus claims cover what a device is, not what a device does. *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 15 USPQ2d 1525 (Fed. Cir. 1990). In this case, the patented apparatus of Apple discloses (as detailed above) all the structural limitations required to perform the recited functional language, therefore was considered to anticipate the claimed after-glow material.

Regarding the claims recitation that the instant invention **“after-glowing material is shaped in a predetermined pattern for displaying information”**, the applicant is advised that, while the features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. *In re Schreiber*, 44 USPQ2d 1429. In addition, it has been held by the courts that apparatus claims cover what a device is, not what a device does. *Hewlett-*

Packard Co. v. Bausch & Lomb Inc., 15 USPQ2d 1525 (Fed. Cir. 1990). In this case, the patented apparatus of Apple discloses (as detailed above) all the structural limitations required to perform the recited functional language, therefore was considered to anticipate the claimed after-glow material.

7. The illuminating device as claimed in claim 1, wherein the after-glowing material comprises a photo-luminescent or phosphorescent material **(a phosphorescent additive, Column 2, line 54)**.

8. An electric lamp comprising a lamp vessel provided with the light-emitter according to claim 1 **(Fig. 1)**.

9. A luminaire comprising a housing **(lamp base 12, Fig. 1)** having a light emission window **(lamp shade 10)**, the housing or the light-emission window being provided with the light-emitter according to claim 1 **(the lamp shade 10 is provided on the lamp base 12)**.

11. A display device **(Fig. 1)** comprising a display window provided with the light-emitter according to claim 1 **(lamp shade 10 is provided with opaque characters 21 creating a display window, Fig. 1; Column 3, lines 8-13)**.

12. An illuminating device comprising:

a light source (**light bulb 22; Fig. 1**) configured to generate primary light when turned on; and a light-emitter (**lamp shade 10; Fig. 1**) activated by the primary light generated by the light source and configured to emit secondary light after the light source is off (**Column 2, line 61-Column 3, line 4**); wherein the light-emitter includes a patterned after-glowing material which is substantially invisible when the light source is on (**the phosphorescent additive is distributed uniformly throughout the clear plastic sheet, the plastic sheet is a translucent thermoplastic such as clear polyvinyl chloride or polyethylene containing a phosphorescent additive; Column 2, lines 3-7; therefore since the plastic sheet/lamp shade 10 can have a variety of shaped and configurations, Column 2, lines 55-60, the phosphorescent additives can have any shape and they are also substantially invisible**).

16. The illuminating device of claim 12, wherein the patterned after-glowing material comprises at least one of a photo-luminescent and phosphorescent material (**a phosphorescent additive, Column 2, line 54**).

17. An electric lamp comprising a lamp vessel provided with the light-emitter according to claim 12 (**Fig. 1**).

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18. A luminaire comprising a housing (**lamp base 12**) having a light emission window (**lamp shade 10**), the housing or the light-emission window being provided with the light-emitter according to claim 12 (**the lamp base 10 is provided with the lamp shade 10, Fig. 1**).

20. A display device comprising a display window provided with the light-emitter according to claim 12 (**lamp shade 10 is provided with opaque characters 21 creating a display window, Fig. 1; Column 3, lines 8-13**).

3. **Claims 1, 10, 12 and 19** are rejected under 35 U.S.C. 102(b) as being anticipated by Gordon (US 2,459,693).

1. An illuminating device comprising light means (**a two filament electric light bulb 3; Fig. 1**) for generating primary light and a light-emitter (**inner and outer lamination layers 8 and 10; Fig. 2**) comprising an after-glowing material (**the center layer 9 has incorporated therein phosphorescent material; Column 3, lines 32-42**) for emitting secondary light after the light means is switched off or has extinguished, wherein the after-glowing material is activated by the primary light emitted from the light means (**Column 3, lines 37-42**), and wherein the after-glowing material is shaped in a predetermined pattern (**the three laminations 8, 9 and 10 may be individually molded or otherwise formed to exact or approximate shapes and then united into the structure; Column 3, lines 61-68**) for displaying information and is substantially invisible when the light

means generates the primary light (**clear and colorless until illuminated by light; Column 3, lines 54-60**).

Regarding the claims recitation that the instant invention “**after-glowing material is shaped in a predetermined pattern for displaying information**”, the applicant is advised that, while the features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. *In re Schreiber*, 44 USPQ2d 1429. In addition, it has been held by the courts that apparatus claims cover what a device is, not what a device does. *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 15 USPQ2d 1525 (Fed. Cir. 1990). In this case, the patented apparatus of Apple discloses (as detailed above) all the structural limitations required to perform the recited functional language, therefore was considered to anticipate the claimed after-glow material.

10. An automotive head lamp (**lamp 1**) comprising a housing (**casing 2**) having a light emission window (**lens 4**), the housing or the light-emission window being provided with the light-emitter according to claim 1 (**layers 8, 9, and 10 are provided in lens 4; shown in Fig. 2**).

12. An illuminating device comprising:

a light source (**a two filament electric light bulb 3; Fig. 1**) configured to generate primary light when turned on; and a light-emitter (**inner and outer**

lamination layers 8 and 10; Fig. 2) activated by the primary light generated by the light source and configured to emit secondary light after the light source is off **(Column 3, lines 32-42)**; wherein the light-emitter includes a patterned after-glowing material which is substantially invisible when the light source is on **(the center layer 9 has incorporated therein phosphorescent material; Column 3, lines 32-42; this anticipates the after-glowing material being incorporated in a patterned or unpatterned manner).**

19. An automotive head lamp **(lamp 1)** comprising a housing **(casing 2)** having a light emission window **(lens 4)**, the housing or the light-emission window being provided with the light-emitter according to claim 12 **(layers 8, 9, and 10 are provided in lens 4; shown in Fig. 2).**

Claim Rejections - 35 USC § 103

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. **Claims 2, 3 and 14** are rejected under 35 U.S.C. 103(a) as being unpatentable over Apple (US 5,833,349) as applied to claims 1 and 12 above, and further in view of Stone (US 3,769,869).

a. Regarding **claims 2, 3, and 14**, Apple teaches the limitations as disclosed above.

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b. Apple does not appear to explicitly disclose the intensity I_{lm} of the primary light emitted by the light means as compared to the secondary intensity I_{le} of the secondary light such that $I_{le}/I_{lm} < 0.5$.

c. However, Stone teaches that a primary intensity of the primary light as compared to a secondary light is at least one of $I_{le}/I_{lm} < 0.5$ (**Column 4, lines 50-55**) and $I_{le}/I_{lm} < 0.1$ (**Column 2, lines 50-52**).

d. Therefore, at the time of the invention it would have obvious to one of ordinary skill in the art, having the teachings Apple and Stone before him or her to have primary and secondary intensities on the device of Apple for the benefit of varying the amount of time the after-glow last, as taught by Stone.

6. **Claims 4, 5 and 13** are rejected under 35 U.S.C. 103(a) as being unpatentable over Apple (US 5,833,349) as applied to claims 1 and 12 above, and further in view of DeLine et al. (US 6,172,613).

e. Regarding **claims 4, 5, and 13**, Apple teaches all the limitations as disclosed above.

f. Apple does not appear to explicitly disclose the initial light output following the switching off or the extinguishing of the light means is lower than 3 cd/m^2 .

g. However, DeLine et al. teaches a level of secondary light (**item 424 shown in Fig. 18**) is at least one of equal to lower than 3 cd/m^2 and equal to or lower than 1 cd/m^2 (**Column 30, lines 44-46**).

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h. Therefore, at the time of the invention, it would have been obvious to one of ordinary skill in the art to have the specified initial light output on the device of Apple for the benefit of display low level lighting, as taught by DeLine et al.

7. **Claims 6 and 15** are rejected under 35 U.S.C. 103(a) as being unpatentable over Apple (US 5,833,349) as applied to claims 1 and 12 above, and further in view of Murai (US 5,416,674).

i. Regarding **claims 6 and 15**, Apple teaches all the limitations as disclosed above.

j. Apple does not appear to explicitly disclose the predetermined pattern of the after-glow material comprising at least one of an alphanumerical character, a logo, and an arrow.

k. However, Murai discloses the predetermined pattern comprising at least one of an alphanumerical character, a logo, and an arrow (**item 23 shown in Fig. 20a**).

l. Therefore at the time of the invention it would have been obvious to one of ordinary skill in the art to have the after-glow material formed in predetermined patterns comprising at least one of an alphanumerical character, logo, and arrow of Murai because this will allow for information to be displayed when the light of the system of Apple goes out.

Response to Arguments

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8. Applicant's arguments with respect to claims 1 and 12 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Danielle Dunn whose telephone number is 571-270-3039. The examiner can normally be reached on M-F 7:30-5:00 with alternate Friday's off.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea can be reached on 571-272-2378. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

DND
8/21/07



Sandra O'Shea
Supervisory Patent Examiner
Technology Center 2800

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| Notice of References Cited | Application/Control No. 10/530,380 | | Applicant(s)/Patent Under Reexamination PETERS ET AL. | |
| | Examiner Danielle Dunn | | Art Unit 2875 | Page 1 of 1 |

U.S. PATENT DOCUMENTS

| * | | Document Number Country Code-Number-Kind Code | Date MM-YYYY | Name | Classification |
|---|---|--|-----------------|-----------------|----------------|
| * | A | US-2,459,693 | 01-1949 | GORDON JOSEPH M | 250/483.1 |
| * | B | US-5,833,349 | 11-1998 | Apple, Wayne B. | 362/84 |
| | C | US- | | | |
| | D | US- | | | |
| | E | US- | | | |
| | F | US- | | | |
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NON-PATENT DOCUMENTS

| * | | Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages) |
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*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)
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